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January 5, 2017

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219

Robert deV. Frierson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW.
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW.
Washington, DC 20429

Barry F. Mardock
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Gerard S. Poliquin
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428.

Loans in Areas Having Special Flood Hazards—Private Flood Insurance
Docket ID No. OCC-2016-0005
Docket ID No. R-1549
RIN 3064-AE27
Docket No. 6705-01-P
RIN 3133-AE64

Dear Sir or Madam,

CRIO Group commends all of you for issuing a proposed rule on "Loans in Areas Having Special Flood Hazards-Private Flood Insurance." We believe the mere issuance of a rule is an important step in expanding the private flood insurance marketplace; especially for owners and operators of commercial real estate. We appreciate your efforts to clarify the provisions of BW-12 and we welcome the opportunity to share our suggestions on how to modify the proposed rule to better accommodate the needs of owners and operators of commercial real estate.

CRIO Group is one of the leading and most sophisticated flood practices in the insurance industry. For more than 15 years, we have continuously developed innovative flood risk management solutions that help property owners overcome long-standing as well as evolving flood insurance and flood risk management challenges. Over the years, we have served clients than own and operate more than 4 million multifamily units and more than 100,000 retail, office, hospitality, industrial and other types of commercial properties. Our mission is to help property owners understand their true flood risk and to ensure property owners have the most appropriate and beneficial flood coverage at the lowest possible price. We strongly support the expansion of the private flood insurance market, because the flood insurance products offered by the National Flood Insurance Program (NFIP) do not adequately satisfy the needs of owners and operators of commercial real estate.

This comment letters explains why the needs of owners and operators of commercial real estate are substantially different from the owners of single family homes, condominium units and condominium associations. This letter also provides a suggestion on how to revise the "Discretionary Acceptance" section of the proposed rule to afford Federally-regulated lenders sufficient flexibility to accept private market flood insurance alternatives that would best serve the needs of owners and operators of commercial real estate and themselves.

Definition of Owners and Operators of Commercial Real Estate

The first thing we want to do is define the phrase "owners and operators of commercial real estate." This phrase includes for-profit businesses, not-for-profit organizations and individuals that own and/or operate real estate that is used in conjunction with their for-profit or not-for-profit operations. This includes all asset classes of commercial real estate, such as multifamily, retail, office and industrial properties that are rented to third party tenants. This also includes other types of businesses which own and operate the real estate in which their businesses are located, such as hotels, restaurants, self-storage, sports arenas, hospitals, houses of worship and almost all other industries. What they all have in common is that their buildings are not used for personal purposes and they are responsible for maintaining appropriate insurance on the buildings, including specifically flood insurance. While the NFIP separates multifamily buildings from all of the non-residential types of buildings, multifamily buildings should be treated the same as all of the non-residential buildings. For purposes of this comment letter, we will refer to all of the owners and operators of commercial real estate as "Commercial Property Owners."

NFIP Statistics

The NFIP is a program designed to serve primarily the needs of single family homeowners, condominium unit owners and condominium associations. Below are NFIP policy statistics as of October 31,2016 provided on FEMA's website, which help illustrate this fact:

Occupancy Type	Policies in Force	Percentage of Total Policies
Single Family Home	3,451,658	68.0%
2 to 4 Family	144,590	2.9%
Condominium Units	1,069,845	21.1%
Other Residential	137,346	2.7%
Non-Residential	270,864	5.3%
All Policies	**5,074,303**	**100%**

The statistics illustrate that only 10.9% of the NFIP's policy base are policies covering apartment buildings, condominium buildings and non-residential buildings, which includes FEMA occupancy types of 2-4 Family, Other Residential and Non-Residential. If we take out of that figure the condominium buildings, which are not within our definition of Commercial Property Owners above, we would estimate that approximately 7.5% of NFIP's policies insure Commercial Property Owners as defined above. This is a small minority of NFIP policies, which is why the NFIP has never focused on developing products that adequately serve the needs of Commercial Property Owners. The NFIP has focused on developing products that adequately serve the needs of the vast majority of its policyholders, which are single family homeowners, condominium unit owners and condominium associations. The NFIP's focus makes sense, but it has left the Commercial Property Owners with NFIP flood insurance products that do not serve their needs or the needs of their Federally-regulated lenders as well as the products currently available in the private flood insurance market.

For homeowners, condominium unit owners and condominium associations, historically the private insurance marketplace has not included flood insurance coverage in any homeowners insurance policies, condominium unit owners policies or, condominium building property insurance policies. Therefore, for those types of property owners, there is a clear need for the NFIP's flood insurance products to serve their needs. For purposes of this comment letter, we will collectively refer to these three types of NFIP customers as "Homeowners."

For Commercial Property Owners, historically the private insurance marketplace has made flood coverage available as an option in most property insurance policies covering all of the asset classes of commercial real estate above. This flood coverage bears an additional cost to the insured, but it often has far better terms and conditions than the coverage offered by the NFIP. While the flood coverage provided in a commercial property policy often has a flood deductible for buildings in Special Flood Hazard Areas (SFHA) that is higher than what the Mandatory Purchase Laws require, there are products available in the private flood insurance marketplace to buy down that property policy's SFHA flood deductible to an amount that would satisfy the Mandatory Purchase Laws in terms of deductible amount.

Therefore, there is a significant difference between the flood coverage the private insurance marketplace makes available to Homeowners versus Commercial Property Owners.

<u>Flood Insurance Needs of Commercial Property Owners</u>

Most of the NFIP policies maintained by Commercial Property Owners are maintained by for-profit businesses or not-for-profit organizations that own and/or operate, and therefore are responsible for insuring, multiple properties with many buildings. Typically, they purchase one property insurance policy in the private insurance marketplace to cover all of the properties and buildings they are responsible for insuring. By doing so, they leverage their scale to secure more favorable terms, conditions and pricing from the private insurance marketplace.

Most of these property insurance policies include flood coverage that has more favorable terms and conditions than the flood insurance products available through the NFIP, such as:

1. Replacement Cost Value Coverage
2. Business Interruption/Loss of Rents Coverage
3. Coverage for Property Outside the Buildings (Signs, Fences, Car Ports, Sidewalks, Parking Lots, Pools and Other Items Outside of Buildings Not Covered by NFIP)
4. Coverage for Items Excluded by NFIP (Inside the Building, but Below the Base Flood Elevation or Otherwise Excluded)

These are very important and very valuable differences between what the private insurance marketplace offers and what NFIP offers. The benefits of having these coverages not offered by NFIP often makes the difference between being able to adequately recover after a flood loss and not being able to adequately recover after a flood loss.

While the NFIP does not currently offer those four important types of coverage, the private insurance marketplace has several surplus lines carriers that offer and provide these important coverages to Commercial Property Owners in the form of primary layer flood insurance policies that would be alternatives that are far more favorable and beneficial to Commercial Property Owners than NFIP flood insurance.

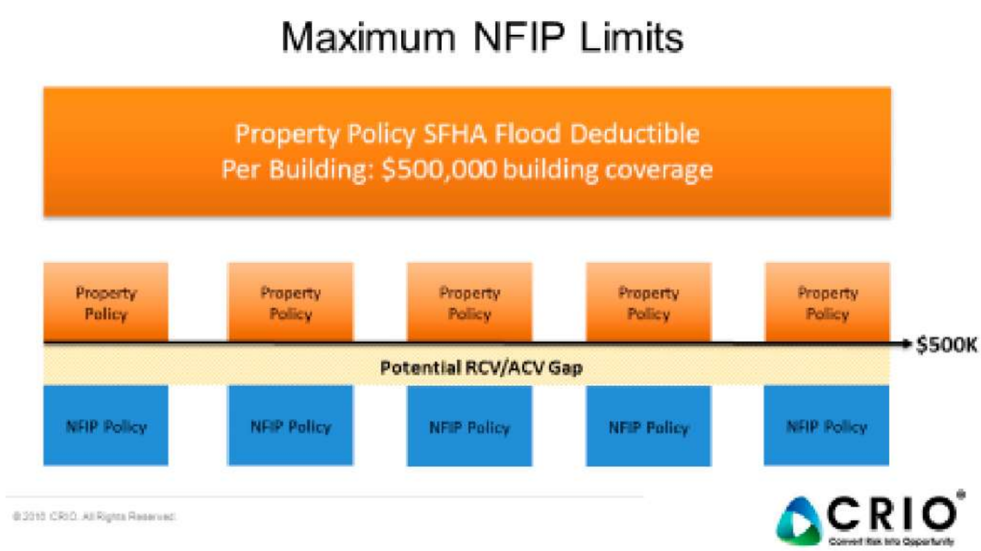
With respect to flood insurance coverage provided through commercial property insurance policies, there are three typical deductible types available to and purchased by Commercial Property Owners for buildings located in SFHA. Below is an explanation of each type of deductible to illustrate why the NFIP's flood insurance products do not adequately satisfy the needs of Commercial Property Owners:

Flood Deductible Type 1: Maximum NFIP Limits

The following is typical SFHA flood deductible language included in property insurance policies with this type of deductible:

> "For locations wholly or partially within Special Flood Hazard Areas (SFHA) as defined by the Federal Emergency Management Agency (FEMA), the deductible shall be an amount equal to the maximum coverage available through the National Flood Insurance Program, whether purchased or not."

The diagram below illustrates this type of deductible using only building coverage offered by NFIP for illustration purposes.



While the Commercial Property Owner can purchase an NFIP policy with a $500,000 building coverage limit, which appears to match up well with the property policy's SFHA flood deductible language, the fact that NFIP's General Property Form provides Actual Cash Value (ACV) coverage often creates substantial gaps between the flood coverage provided in the NFIP policies and the flood coverage provided in the property insurance policy. In addition to the gaps in building coverage and contents coverage that often occurs as a result of NFIP policies providing ACV coverage, the Commercial Property Owner is further hurt as a result of the NFIP policies not providing business interruption coverage, coverage for property outside of the buildings and coverage for items below the base flood elevation or otherwise excluded by NFIP. These gaps in building and contents coverage, and lack of other important coverages, often make the difference between the Commercial Property Owner being able to adequately recover from the flood loss or not being able to adequately recover from a flood loss. Commercial Property Owners and their Federally-regulated lenders would be far better served by purchasing products currently available in the private flood insurance marketplace that would provide the four important coverages described above that NFIP does not

Flood Deductible Type 2: Flat Dollar Amount Per Occurrence

The following is typical SFHA flood deductible language included in property insurance policies with this type of deductible:

> "For locations wholly or partially within Special Flood Hazard Areas (SFHA) as defined by the Federal Emergency Management Agency (FEMA), the deductible shall be $500,000 per occurrence for building, contents and business interruption combined."

This type of deductible provides one deductible for each occurrence (flood event). Even if one flood event damages 10 properties that collectively include 100 damaged buildings, only one deductible applies to the whole loss. The diagram below illustrates this type of deductible using only building coverage offered by NFIP for illustration purposes.

For Commercial Property Owners with this type of SFHA flood deductible in their property insurance policies, they are forced to buy more NFIP flood coverage than they need to buy down their deductible. These Commercial Property Owners can suffer from the same RCV/ACV coverage gap and are prevented from purchasing the three other important coverages described above because there is insufficient flexibility in the proposed rule to allow the Commercial Property Owner to purchase a policy that is customized to its needs.

For example, these Commercial Property Owners do not want to, or need to, maintain 100 separate NFIP policies, each with the maximum limit available through NFIP. Buying that many NFIP policies would be $50 million of building coverage through the NFIP, when they only need a $500,000 limit to cover the deductible. Commercial Property Owners with this type of deductible would be far better served if they could purchase a private flood insurance policy to cover all of their SFHA locations and buildings with the following coverage limit:

> "The limit shall be $500,000 per occurrence for building, contents and business interruption combined."

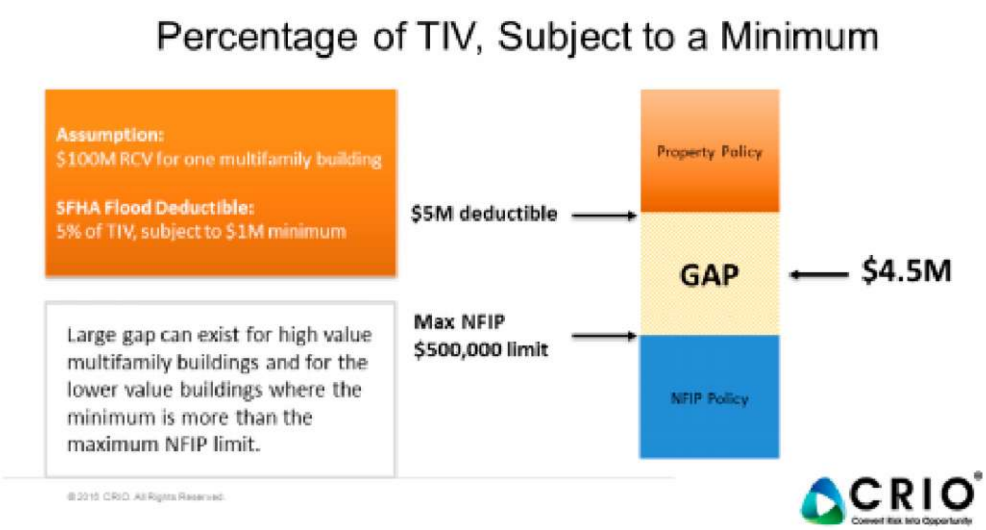
With the coverage limit above and a policy form that provides RCV coverage, business interruption coverage, coverage for property outside the building and coverage for items below the base flood elevation or otherwise excluded by NFIP, the Commercial Property Owner and its Federally-regulated lender would have a far better chance of adequately recovering from a flood loss. This would eliminate the possibility of a coverage gap and provide much broader coverage than an NFIP policy.

Flood Deductible Type 3: Percentage of Total Insurance Values, Subject to A Minimum Amount

The following is typical SFHA flood deductible language included in property insurance policies with this type of deductible:

> "For locations wholly or partially within Special Flood Hazard Areas (SFHA) as defined by the Federal Emergency Management Agency (FEMA), the deductible shall be Five Percent (5%) of the Total Insurable Values involved in the loss, subject to a $1 million minimum, for building, contents and business interruption combined."

This type of deductible provides one deductible for each occurrence (flood event). Even if one flood event damages 10 properties that collectively include 100 damaged buildings, only one deductible applies to the whole loss. The diagram below illustrates this type of deductible using only building coverage offered by NFIP for illustration purposes.



For Commercial Property Owners with this type of SFHA flood deductible, it is very clear that NFIP's current flood insurance product does not satisfy their needs. This deductible type leaves an extremely detrimental coverage gap in most cases by exacerbating all of the shortfalls described previously.

Commercial Property Owners with this type of deductible would be far better served if they could purchase a private flood insurance policy to cover all of their SFHA locations and buildings with the following coverage limit:

> "The limit shall be the greater of Five Percent of Total Insurance Values involved in the loss or $500,000 per occurrence for building, contents and business interruption combined."

Conclusion

The trend in the property insurance marketplace has been moving from deductible types 1 and 2 to deductible type 3. Since one of the goals of fostering the development of the private flood marketplace is to help Federally-regulated lenders more adequately protect their collateral, it is imperative that the propose rule afford lenders sufficient flexibility to accept flood insurance policies tailored to the unique needs of commercial property owners; specifically, those with flood insurance coverage included in their property insurance policies with any of the three types of flood deductibles described hereinabove.

While the proposed rule is an excellent and important step in the right direction, it does not afford lenders the flexibility to accept private flood insurance policies that are customized to buy down the types of SFHA flood deductibles described in this comment letter. This type of borrower is a sophisticated insurance buyer that often purchases property insurance policies with custom terms and conditions from surplus lines insurance carriers. These borrowers should be able to purchase private flood insurance policies from surplus lines carriers that are customized to fit perfectly with the SFHA flood deductible in their property insurance policies.

The insurance departments of commercial lenders, and the insurance consultants some lenders use to determine if multi-location insurance policies adequately protect their collateral, are sophisticated as well. They have the capability to determine if the flood coverage provided by a private market flood policy plus the flood coverage provided by the property policy adequately protect their collateral.

If borrowers with these types of SFHA flood deductible are restricted to purchasing NFIP flood insurance policies or private flood insurance policies that must be almost identical to NFIP policies, then both borrowers and Federally-regulated lenders have to bear far more risk than want or need given the products available in the private flood insurance marketplace. The private flood insurance marketplace is willing tailor products to the unique need of each Commercial Property Owner, which would eliminate this unnecessary risk. However, in order to allow the marketplace to eliminate this unnecessary risk, the Federal Regulators must revise the "Discretionary Acceptance" section of the proposed rule to simply allow the lenders to use their professional judgment to determine whether or not a borrower has flood coverage that adequately protects their collateral.

The proposed rule will shape the products offered by the private flood insurance market and determine the amount of unnecessary risk that must be borne by borrowers and Federally-regulated lenders. We would welcome an opportunity to meet with you in person to discuss our suggestions in far greater detail, since the implications of the proposed rule are very significant on virtually all Commercial Property Owners, their Federally-regulated lenders and their tenants and residents. We thank you in advance for reading our comments and we look forward to speaking with you soon.

Sincerely,

Dan Freudenthal, President
CRIO Group